

**IN THE OFFICE OF
ADMINISTRATIVE HEARINGS
FILE NO. 15 DHR 03085**

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SETTLEMENT AGREEMENT

This Settlement Agreement (“Agreement”) is made and entered into effective as of the date of execution by and between The Right Choice MWM, Inc., and its predecessors, successors, parents, subsidiaries, managers, affiliates, assigns, officers, directors, employees, and agents (hereinafter “The Right Choice MWM, Inc.” or “Provider”) and the Sandhills Center for MH/DD/SAS (hereinafter “Sandhills”). The foregoing parties are at times referred to herein collectively as “Parties” and individually as a “Party.”

WITNESSETH:

WHEREAS, Sandhills is responsible for managing the North Carolina Medical Assistance Program's benefits for mental illness, intellectual and developmental disabilities and substance abuse; and,

WHEREAS, Provider entered into a Procurement Contract with Sandhills to provide various mental illness, intellectual and developmental disabilities and substance abuse to Medicaid recipients, including Diagnostic Assessments; and

WHEREAS, Sandhills, performed a post-payment review of selected Provider's paid Medicaid claims on April 14 and 15, 2014; and

WHEREAS, Sandhills identified alleged billing errors as a result of the audit and calculated the alleged overpayment for all claims billed during the period audited to be FOUR THOUSAND ONE HUNDRED SIXTY-THREE DOLLARS AND FORTY CENTS (\$4,163.40)); and

WHEREAS, Sandhills sent a notice dated January 27, 2015 (hereinafter “the Tentative Notice of Overpayment”) to Provider, via certified mail, styled as Program Integrity Case No. 46 (hereinafter “PI Case #46”), identifying the alleged overpayment amount; and

WHEREAS, Provider denied the alleged documentation errors and alleged overpayment, and submitted a Request for Reconsideration to Sandhills, and a Reconsideration Review was completed by Sandhills which upheld the original findings of PI Case #46; and

WHEREAS, Provider denied the alleged billing errors and alleged overpayment, and filed a petition for contested case hearing at the Office of Administrative Hearings, contesting the Sandhills Decision of PI Case #46, and the matter was assigned case number 15 DHR 03085 (hereinafter “15 DHR 03085 Contested Case”); and

WHEREAS, Provider contends that it prepared, submitted and appropriately billed for claims covered by the post-payment review, and Sandhills contends the recoupment is proper; and

WHEREAS, it is the policy of this State, pursuant to N.C.G.S. §150B-22, to resolve disputes persons aggrieved through informal procedures; and

WHEREAS, the Parties have reached a compromise settlement resolving the differences between them on the disputes and potential disputes described herein, the terms and conditions of which are set forth in this Agreement;

AGREEMENT

NOW, THEREFORE, for and in consideration of the mutual promises and covenants hereinafter set forth, for agreed upon consideration, and for other good and valuable consideration, the sufficiency of which is hereby acknowledged, the Parties, for themselves and their predecessors, successors, parents, subsidiaries, managers, affiliates, assigns, officers, directors, employees, agents, and attorneys, agree as follows:

1. The settlement effected by this Agreement is a compromise of disputed claims, made to avoid the uncertainty and expense of litigation. The promises and terms agreed to herein are not to be construed as an admission of any alleged liability, nonconformity, error, or other deficiency on the part of any Party. Any such alleged liability, nonconformity, error, or other deficiency is expressly denied by the respective Parties.

2. The Right Choice MWM, Inc., agrees to pay to Sandhills the sum of TWO THOUSAND AND EIGHTY-TWO DOLLARS AND NO CENTS (\$2,082.00) in full compromise and settlement of PI Case No. #46, 15 DHR 03085 Contested Case. Petitioner owes no penalty as long as it pays the agreed upon amount in accordance with the terms of this agreement. The aforementioned amount shall be repaid through a single payment due by October 21, 2015. Failure to make the payment in accordance with this Agreement as set forth shall make the account payable past due and will result in the immediate recoupment of the entire original amount due to Sandhills plus a penalty of TEN PERCENT (10%) of the amount due and any interest as allowed by law. In the event of such default, Sandhills further reserves its rights to

pursue such other available means of recovery as are allowed by law.

3. Sandhills agrees to accept payment of the sum of TWO THOUSAND AND EIGHTY-TWO DOLLARS AND NO CENTS (\$2,082.00) in full compromise and settlement of the alleged overpayments identified by Sandhills in PI Case #46, the Tentative Notice of Overpayment, the Reconsideration Review Decision, and the 15 DHR 03085 Contested Case, as referred to in the recitals above.

4. Sandhills acknowledges, as part of the settlement between the Parties, that the alleged overpayments that were at issue are not based upon allegations by Sandhills that The Right Choice MWM, Inc. engaged in fraud, willful misrepresentation, or other illegal conduct, subject to any other provisions of this Agreement.

5. The issuance of the Tentative Notice of Overpayment, the Reconsideration Review Decision and 15 DHR 03085 Contested Case, and the amounts paid by Provider as part of this settlement will not be considered by Sandhills in evaluation of Provider's good standing with Sandhills so long as Provider has complied or is complying with the provisions of this Agreement. For the purposes of future enrollment, re-enrollment, credentialing or re-credentialing applications submitted by Provider to Sandhills, the Tentative Notice of Overpayment, the Reconsideration Review Decision and 15 DHR 03085 Contested Case, and the amounts paid by Provider as part of this settlement do not constitute an amount owed to Medicaid that has not been paid in full or a suspension of payments, or a violation of federal or state laws, rules, or regulations governing North Carolina's Medicaid program, so long as Provider has complied or is complying with the provisions of this Agreement. For the purpose of any future enrollment, re-enrollment, credentialing or re-credentialing application, Provider must acknowledge that this recoupment or alleged overpayment identification action was taken.

6. Provider shall not be subject to further audits by Sandhills or its contractors for the purpose of identifying any possible overpayments made to Provider for any dates of service within the audit period identified in the Tentative Notice of Overpayment for the provider number and the claims identified in the Tentative Notice of Overpayment, subject to and in accordance with any other provisions of this Agreement and N.C.G.S. § 108C-5(l).

7. The terms of this Settlement Agreement shall not be deemed an admission by either of the parties to this Agreement.

8. Provider agrees to file a notice of dismissal of the 15 DHR 03085 Contested Case pending at the Office of Administrative Hearings within fifteen (15) days of the execution of this Agreement.

9. All attorney's fees, costs or expenses related to all cases and disputes described herein shall be borne by each of the Parties individually and no claim for such fees, costs or expenses shall be made.

10. Each party hereby releases the other, its current and former officials, employees, attorneys, agents and representatives, from any and all liability and causes of action that have

arisen or may arise out of PI Case #46, the Tentative Notice of Overpayment, the Reconsideration Review Decision, or the 15 DHR 03085 Contested Case.

11. The terms of this Settlement Agreement shall not be deemed an admission by either of the parties to this Agreement. Notwithstanding any other provision of this Agreement, if administrative or legal action is pursued in the future by any third party or entity, including the Federal Government, against Sandhills, the terms of this Settlement Agreement shall not be construed to estop or otherwise preclude Sandhills from pursuing any claims or raising any issues which would be available in the absence of the settlement embodied within this Agreement. In such event, the Provider would also not be estopped or precluded from pursuing any defenses or raising any issues which would be available in the absence of this settlement. Furthermore, Sandhills expressly reserves the right to take appropriate action in the event that a third party or other entity, including the Federal Government or the North Carolina Medicaid Fraud Investigations Unit of the North Carolina Attorney General's Office, initiates legal or administrative action based on evidence or allegations of fraud or other illegal conduct on the part of the Provider with respect to the care or services provided to patients involved in this matter. Nothing in this Agreement shall be construed to prevent the Federal Government or the North Carolina Medicaid Fraud Investigations Unit of the North Carolina Attorney General's Office from independently taking any action in the future against Provider. In such event, the Provider does not waive and expressly reserves any and all administrative or legal rights to challenge any such action.

12. This Agreement constitutes the entire understanding and agreement between the Parties with respect to the subject matter hereof, and there are no promises, understandings, or representations other than those set forth herein. This Agreement supersedes any and all other prior agreements and drafts regarding the subject matter hereof. This Agreement may not be amended or modified except by a writing signed by both of the Parties or their duly authorized representatives.

13. This Agreement shall be construed and governed according to the laws of the State of North Carolina. If any provisions of this Agreement are held to be invalid or unenforceable, all other provisions shall nevertheless continue in full force and effect.

14. Each Party acknowledges that it has carefully read this Agreement, knows the contents thereof, and executes the Agreement voluntarily as its own free act. Each Party further acknowledges that it has conferred to the extent that it has deemed appropriate with legal counsel regarding this Agreement prior to its execution.

15. This Settlement Agreement may be executed in several counterparts, each of which shall be an original, so that all of which taken together shall constitute one and the same instrument. Facsimile signatures on this Settlement Agreement, whether transmitted by telecopier/facsimile or by email, shall be acceptable and deemed binding as if originals.

16. The undersigned represent and warrant that they are authorized to enter into this Agreement on behalf of the Parties.

17. This Agreement is binding on the Parties' predecessors, successors, parents, subsidiaries, managers, affiliates, assigns, officers, directors, employees, agents, and attorneys.

18. This Agreement shall be effective upon the occurrence of the complete execution of this Agreement.

THIS SETTLEMENT AGREEMENT agreed and executed by the Parties hereto:

THE RIGHT CHOICE MWM, INC.

By: _____ Date: _____

The Right Choice MWM, Inc.

SANDHILLS CENTER FOR MH/DD/SAS

By: _____ Date: _____